

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of: Date: January 22, 2007
Randal Lee BERTRAM, et al. Confirmation No: 1980
Serial No: 09/805,413 Group Art Unit: 2145
Filed: March 13, 2001 Examiner: Swearingen, Jeffrey
For: METHOD AND SYSTEM FOR PROVIDING PERFORMANCE ANALYSIS
FOR CLUSTERS

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

TERMINAL DISCLAIMER TO OBVIATE DOUBLE
PATENTING REJECTION 37 C.F.R. 1.321(c)

Sir:

The undersigned Attorney of Record, appointed by the Assignee International Business Machines, Inc., of the entire right, title and interest in and to the above-identified application by virtue of an assignment recorded in the United States Patent and Trademark Office on April 16, 2001, under Reel/Frame 011666/0888, submits herewith a Terminal Disclaimer under 37 C.F.R. 1.321(c).

DISCLAIMER

The owner, INTERNATIONAL BUSINESS MACHINES, of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term of U.S. Patent 6,434,613, the term being defined in 35 U.S.C. 154 to 156 and 173, as shortened by any terminal disclaimer filed prior to the grant of any patent on the pending second application. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and any patent granted on the second application are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 to 156 and 173 of any patent granted on the second application, as shortened by any terminal disclaimer filed prior to the patent grant, in the event that any such granted patent: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as shortened by any terminal disclaimer filed prior to its grant.

The undersigned Attorney of Record believes this application is in condition for allowance. If any unresolved issues remain, please contact Applicant's attorney at the telephone number indicated below.

Respectfully submitted,

January 22, 2007

/Janyce R. Mitchell/Reg. No. 40,095

Janyce R. Mitchell
Attorney for Applicant (s)
Reg. No. 40,095
(650) 493-4549